

**United States Department of Labor
Employees' Compensation Appeals Board**

S.H., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Chicago, IL,
Employer**

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**Docket No. 21-0640
Issued: February 2, 2023**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 17, 2021 appellant, through counsel, filed a timely appeal from a November 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the November 24, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work for the period commencing March 30 through April 10, 2020, causally related to her accepted employment condition.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 22, 2012 appellant, then a 46-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed left shoulder tendinosis of the supraspinatus tendon due to factors of her federal employment, including sweeping and pulling cages, dumping mail on the belt, and pulling down bundles.⁵ She noted that she first became aware of her condition and first realized its relation to her federal employment on June 11, 2011. Appellant stopped work on November 19, 2011 and returned to part-time, limited duty on January 2, 2012. OWCP accepted her claim for disorder of bursae and tendons of the left shoulder.

Appellant stopped work for intermittent periods between July 28, 2012 and January 10, 2019. OWCP paid her wage-loss compensation on the supplemental rolls for intermittent periods of total and partial disability.⁶

On January 14, 2019 appellant accepted a part-time, limited-duty job offer for a mail handler position, working six hours per day. The duties of the assignment required making lids and applying labels on purple bags, scanning mail containers and/or equipment on platforms, repairing damaged parcels, and scanning airline containers on the south platform up to six hours per day. The physical requirements of the position involved lifting and carrying up to 20 pounds for 2.5 hours, simple grasping fine manipulation up to 6 hours per day, and no reaching forward more than 6 hours per day. OWCP continued to pay appellant wage-loss compensation on the supplemental rolls for the remaining two hours per day until March 27, 2020.

In a report dated April 1, 2020, Dr. Salman A. Chaudri, an osteopath Board-certified in orthopedic surgery, indicated that appellant was seen for evaluation of left shoulder pain. On

⁴ Docket No. 17-1101 (issued August 3, 2017).

⁵ OWCP assigned the present claim OWCP File No. xxxxxx906. Appellant has a previously accepted traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx685 for a left shoulder sprain as causally related to an accepted September 25, 2008 employment incident. On September 4, 2020 OWCP administratively combined these claims with the current claim serving as the master file.

⁶ Beginning February 23, 2015 appellant filed several claims for compensation (Form CA-7) for total disability beginning February 11, 2015. By decision dated April 8, 2015, OWCP denied her wage-loss compensation claims finding insufficient medical evidence to establish that her inability to work beginning February 11, 2015 was causally related to a worsening of her accepted left shoulder condition. Appellant disagreed with the decision and filed requests for reconsideration on January 27 and October 25, 2016. By decision dated March 30, 2017, OWCP denied her request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a). On April 25, 2017 appellant appealed to the Board. In an August 3, 2017 decision, the Board set aside the March 30, 2017 decision and remanded the case for further merit review. *Supra* note 3.

physical examination, he observed no tenderness at the acromial clavicular or sternoclavicular joints. Dr. Chaudri diagnosed left shoulder impingement syndrome. He completed a work status note indicating that appellant could return to work with restrictions of “[n]o work with the affected extremity.”

On April 10, 2020 appellant filed a Form CA-7 for leave without pay (LWOP) for disability from work for the period March 30 through April 10, 2020. On the reverse side of the claim form, a human resource management specialist for the employing establishment indicated that appellant claimed 80 hours of LWOP and did not return to work.

In a development letter dated April 13, 2020, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed. OWCP afforded appellant 30 days to respond.

Appellant submitted a March 30, 2020 medical note by Dr. John E. Rogers, a Board-certified family physician, who indicated that appellant was treated on that date and could return to work on April 1, 2020.

In an April 15, 2020 report and work status note, Dr. Chaudri recounted appellant’s complaints of left shoulder pain. He provided examination findings and assessed left shoulder impingement syndrome, tear of left glenoid labrum, and incomplete tear of left rotator cuff. Dr. Chaudri indicated that appellant could return to work with restrictions.

Appellant also submitted a May 18, 2020 progress note by Dr. Alice Joo-Hyun Lee, an internist, and a June 16, 2020 work status note by Dr. Bradley Hart Saitta, an orthopedic surgeon, regarding her treatment for persistent left shoulder pain and ongoing work restrictions.

By decision dated July 23, 2020, OWCP denied appellant’s claim for compensation, beginning March 30, 2020. It found that the medical evidence of record was insufficient to establish that she was disabled from work beginning March 30, 2020 due to her accepted employment condition.

On July 30, 2020 appellant requested reconsideration.

Appellant submitted a July 13, 2020 narrative report by Dr. Chaudri. Dr. Chaudri recounted that appellant was first evaluated by his office on April 20, 2015 for complaints of bilateral shoulder and right thumb pain due to a work injury. He provided a detailed discussion of the medical treatment that appellant received. Dr. Chaudri indicated that appellant was evaluated on April 1 and 15, 2020 for complaints of left shoulder pain and noted that she was given a cortisone injection. He reported that she recently returned with complaints of increased pain due to the repetitive nature of her job. Dr. Chaudri opined that appellant’s condition worsened due to her repetitive job duties.

Appellant submitted reports and work status notes dated July 29 through November 4, 2020 by Dr. Chaudri who indicated that examination findings remained unchanged and assessed left shoulder impingement syndrome.

In a work status note dated August 26, 2020, Dr. Lewis Shi, a Board-certified orthopedic surgeon, indicated that appellant had ongoing pain and disability. He reported that she could not use her left arm and requested that her work accommodate her restrictions.

By decision dated November 24, 2020, OWCP denied modification of the July 23, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁹ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁰

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden of proof, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.¹¹ This burden of proof includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.¹² Where no such rationale is present, the medical evidence is of diminished probative value.¹³

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must

⁷ *Supra* note 2.

⁸ See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁰ See *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹¹ *S.F.*, Docket No. 19-1735 (issued March 12, 2020); *J.B.*, Docket Nos. 18-1752, 19-0792 (issued May 6, 2019); *C.G.*, Docket No. 16-1503 (issued May 17, 2017); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹² *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹³ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.¹⁴

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period March 30 through April 10, 2020, causally related to her accepted employment condition.

In support of her disability claim, appellant submitted reports dated April 1 through November 4, 2020 by Dr. Chaudri who noted left shoulder examination findings of no tenderness at the acromial clavicular or sternoclavicular joints. Dr. Chaudri diagnosed left shoulder impingement syndrome and indicated that appellant could work with restrictions of “[n]o work with the affected extremity.” In a July 13, 2020 narrative report, he explained that she was evaluated for increased bilateral shoulder pain on April 1 and 15, 2020 and opined that her condition worsened due to her repetitive job duties. While Dr. Chaudri opined that appellant’s condition had worsened due to her federal employment and provided additional work restrictions, he did not provide any medical rationale explaining how her left shoulder condition had worsened such that she was no longer able to perform her limited-duty assignment.¹⁶ The Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition/period of disability and employment factors.¹⁷ These reports, therefore, are insufficient to establish appellant’s disability claim. Dr. Chaudri’s remaining medical reports do not address the claimed period of disability. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s condition or disability is of no probative value.¹⁸ Thus, these reports are of no probative and are insufficient to establish entitlement to wage-loss compensation.

In a March 30, 2020 letter, Dr. Rogers noted that appellant could return to work on April 1, 2020. As he indicated that she could return to work, his medical opinion negates her claim that she was totally disabled from limited-duty work from March 30 through April 10, 2020.

¹⁴ V.A., Docket No. 19-1123 (issued October 29, 2019).

¹⁵ See S.G., Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁶ See C.B., Docket No. 20-0629 (issued May 26, 2021).

¹⁷ J.S., Docket No. 18-0944 (issued November 20, 2018).

¹⁸ R.J., Docket No. 19-0179 (issued May 26, 2020); L.B., Docket No. 18-0533 (issued August 27, 2018); D.K., Docket No. 17-1549 (issued July 6, 2018).

Appellant submitted other medical reports, including Dr. Lee's May 18, 2020 progress note, Dr. Saitta's June 16, 2020 work status note, and Dr. Shi's August 26, 2020 report. These reports postdate the claimed period of total disability and do not, otherwise, address appellant's inability to work for the period March 30 through April 10, 2020.¹⁹ As such, they are of no probative value and thus insufficient to meet appellant's burden of proof.

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed period of total disability and her accepted employment condition, the Board finds that she has not met her burden of proof to establish total disability from work for the period March 30 through August 10, 2020.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period March 30 through April 10, 2020, causally related to her accepted employment condition.

¹⁹ *M.A.*, Docket No. 19-1119 (issued November 25, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board